SUPREME COURT OF THE UNITED STATES.

No. 341.

SUCHET MAURAN, 2D, PLAINTIFF IN ERROR,

vs.

THE MERCANTILE MARINE INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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1 UNITED STATES OF AMERICA, *Massachusetts, District, ss:*

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of May, in the year or our Lord one thousand eight hundred and sixty-six, before the honorable Nathan Clifford, associate justice, and the honorable John Lowell, district judge.

SUCHET MAURAN, 2d, of Providence, in the State of Rhode Island, plaintiff,
versus
THE MERCANTILE MARINE INSURANCE COMpany, a corporation duly established by the laws of the Commonwealth of Massachusetts, having their usual place of business in Boston, in said district of Massachusetts, defendants.

In a plea of the case, for that the said Suchet Mauran, (the second,) the plaintiff, is a citizen of the State of Rhode Island, one of the United States of America, and resides at Providence, in said State of Rhode Island; and that the said Mercantile Marine Insurance Company, the defendants, are a corporation established in Boston, in the State of Massachusetts, one of the United States of America, by the laws of the said State of Massachusetts, and having their usual and principal place of business in said Boston; and that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars.

And the said plaintiff further says that on the twenty-eighth day of November, in the year of our Lond one thousand eight hundred and sixty, he was owner of the ship Marshall, and the said defendants, in consideration of a certain premium to be paid to them by said plaintiff, made to him at said Boston, on said twenty-eighth day of November, a policy of insurance upon the said ship Marshall, for and during the term of one year, the risk to begin at the time when policy No. 15,704 by the said company on the same vessel should terminate, and if the said ship Marshall should be on a passage at the end of said term, the risk to continue until her arrival at her port of destination at pro rata premium; and said defendants thereby promised the said plaintiff to insure to him the sum of ten thousand dollars upon the said ship for the said term, and until said arrival, against the adventures and perils of the seas, fire, enemies, pirates, assailing thieves, restraints, and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured were owner of the vessel,) and of the mariners, and all other losses and misfortunes which had or should come to the damage of the said ship or any part thereof, to which insurers were liable by the rules and customs of insurance in Boston; and in case of loss, to pay such loss in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums du to said defendants from said plaintiff, when such loss should become

due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the president and directors of said defendants, they discounting interest for anticipating payment; and it was also therein agreed that in case of capture or detention the insured should not have the right to abandon therefor until proof should be exhibited of condemnation or of the continuance of the detention (by capture or other arrest) for at least ninety days; and it was also agreed that the insurers should not be answerable for any charge, damage, or loss which might arise in consequence of seizure or detention for, or on account of illicit or prohibited trade, or trade in articles contraband of war; and in the margin of said policy, made as aforesaid, the said ship was warranted by the assured free from loss or expense arising from capture, seizure, detention, or the consequences of any attempt thereat, any stipulations in said policy to the contrary notwithstanding; and it was, in said margin, also provided and agreed that it should be understood that the said defendants should not be exempt from the risk of ordinary piracy; and the said plaintiff says that the said term of one year began thereafter, to wit, on the twenty-ninth day of said November, at noon, and that the said ship Marshall, being and continuing to be owned as aforesaid, was, within the said term of one year, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-one, while at sea, and on her lawful voyage from Havre, in France, to New Orleans, in the State of Louisiana, one of the United States of America, and near the mouth of the Mississippi river, within said State of Louisiana, by pirates assailed and forcibly taken away from, and out of the control of, the said plaintiff, and thereby, by the adventures, perils, and misfortunes agreed to be insured against by said defendants, as aforesaid, was wholly lost to the said plaintiff; and the said defendants had notice of said loss thereafter, and more than sixty days before the commencement of this action, to wit, on the twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-one, and were bound to pay to the said plaintiff the said sum of ten thousand dollars in sixty days after said notice; yet the defendants have not paid the said sum, though requested, and though the said sixty days have elapsed, and though the said plaintiff has offered to first deduct the amount of the said premium note if unpaid, and all sums due or coming due to said defendants from said plaintiff, when said loss became due.

And also for that the said Suchet Mauran (the second,) the plaintiff, is a citizen of the State of Rhode Island, one of the United States of America, and resides at Providence, in said State of Rhode Island; and that the said Mercantile Marine Insurance Company, the defendants, are a corporation established in Boston, in the State of Massachusetts, one of the United States of America, by the laws of the said State of Massachusetts, and having their usual and principal place of business in said Boston; and that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars.

2 And the said plaintiff further says that on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and sixty, he was owner of the ship Marshall, and the said defendants, in consideration of a certain premium to be paid to them by said plaintiff, made to him at said Boston, on said twenty-eighth day of November, a certain other policy of insurance upon the said ship for and during the term of one year, the risk to begin at the time when policy No. 15,704 by the said company on the same vessel should terminate; and if said ship should be on a passage at the end of said term the risk to continue until her arrival at her port of destination at pro rata premium; and said defendants thereby promised the said plaintiff to insure to him the sum of ten thousand dollars upon the said ship for the said term and until said arrival, against the adventures and perils of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured were owner of the vessel,) and of the mariners, and all other losses and misfortunes which had or should come to the damage of the said ship or any part thereof, to which insurers were liable by the rules and customs of insurance in Boston, and in case of loss, to pay such loss in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to said defendants from said plaintiff when such loss should become due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the president and directors of said defendants, they discounting interest for anticipating payment; and it was also therein agreed that in case of capture or detention the insured should not have the right to abandon therefor until proof should be exhibited of condemnation or of the continuance of the detention (by capture or other arrest) for at least ninety days; and it was also therein agreed that the insurers should not be answerable for any charge, damage, or loss which might arise in consequence of seizure or detention for or on account of illicit or prohibited trade, or trade in articles contraband of war; and in the margin of said policy, made as aforesaid, the said ship was warranted by the assured free from loss or expense arising from capture, seizure, detention, or the consequences of any attempt thereat, any stipulations in said policy to the contrary notwithstanding; and it was in said margin also provided and agreed that it should be understood that the said defendants should not be exempt from the risk of ordinary piracy; and the said plaintiff says that the said term of one year began thereafter, to wit, on the twenty-ninth day of said November, at noon, and that the said ship Marshall, being and continuing to be owned as aforesaid, was, within the said term of one year, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-one, while at sea, and on her lawful voyage from Havre, in France, to New Orleans, in the State of Louisiana, one of the United States of America, and near the mouth of the Mississippi river, within said State of Louisiana, by assailing thieves attacked and forcibly taken away from, and out of the control of, the said plaintiff, and thereby,

by the adventures, perils, and misfortunes agreed to be insured against by said defendants, was wholly lost to the said plaintiff; and the said defendants had notice of said loss thereafter, and more than sixty days before the commencement of this action, to wit, on the twenty-third day of August in the year of our Lord one thousand eight hundred and sixty-one, and were bound to pay to the said plaintiff the said sum of ten thousand dollars in sixty days after said notice; yet the said defendants have not paid the said sum, though requested, and though the said sixty days have elapsed, and though the said plaintiff has offered to first deduct the amount of the said premium note, if unpaid, and all sums due or coming due to said defendants from said plaintiff when said loss became due.

And also for that the said Suchet Mauran, (the second,) the plaintiff, is a citizen of the State of Rhode Island, one of the United States of America, and resides at Providence, in the said State of Rhode Island, and that the said Mercantile Marine Insurance Company, the defendants, are a corporation established in Boston, in the State of Massachusetts, one of the United States of America, by the laws of the said State of Massachusetts, and having their usual and principal place of business in said Boston; and that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars.

And the said plaintiff further says that on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and sixty, he was owner of the ship Marshall, and the said defendants, in consideration of a certain premium to be paid to them by the said plaintiff, made to him at said Boston, on the said twenty-eighth day of November, a certain other policy of insurance upon the said ship Marshall, for and during the term of one year; the risk to begin at the time when policy No. 15,704 by the said company on the same vessel should terminate; and if said ship should be on a passage at the end of said term, the risk to continue until her arrival at her port of destination at pro rata premium; and said defendants thereby promised the said plaintiff to insure to him the sum of ten thousand dollars upon the said ship for the said term and until said arrival, against the adventures and perils of the seas, fire, enemies, pirates, assailing theives, restraints and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured were owner of the vessel,) and of the mariners, and all other losses or misfortunes which had or should come to the damage of the said ship, or any part thereof, to which insurers were liable by the rules and customs of insurance in Boston, and in case of loss to pay such loss in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due from said plaintiff to said defendants when such loss should become due, being first deducted, and all sums coming due being first paid, or secured to the satisfaction of the president and directors of said defendants, they discounting interest for anticipating payment. And it was also therein agreed that in
3 case of capture or detention the insured should not have the

right to abandon therefor until proof should be exhibited of condemnation, or of the continuance of the detention (by capture or other arrest) for at least ninety days; and it was also agreed that the insurers should not be answerable for any charge, damage, or loss which might arise in consequence of seizure or detention for or on account of illicit or prohibited trade or trade in articles contraband of war; and in the margin of said policy, made as aforesaid, the said ship was warranted by the assured free from loss or expense arising from capture, seizure, detention, or the consequences of any attempt thereat, any stipulations in said policy to the contrary notwithstanding. And it was in said margin also provided and agreed that it should be understood that the said defendants should not be exempt from the risk of ordinary piracy. And the said plaintiff says that the said term of one year began thereafter, to wit, on the twenty-ninth day of said November, at noon. and that the said ship Marshall, being and continuing to be owned as aforesaid, was within the said term of one year, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-one, while on her lawful voyage from Havre, in France, to New Orleans, in the State of Louisiana, one of the United States of America, and while within the Mississippi river, and in the port of New Orleans, within said State of Louisiana, by pirates assailed and forcibly taken away from, and out of the control of, the said plaintiff, and thereby, by the adventures, perils, and misfortunes agreed to be insured against by said defendants, as aforesaid, was wholly lost to the said plaintiff; and said defendants had notice of said loss thereafter and more than sixty days before the commencement of this action, to wit, on the twenty-third day of August, in the year of our Lord one thousand eight hundred and sixty-one, and were bound to pay to said plaintiff said sum of ten thousand dollars in sixty days after said notice; yet the said defendants have not paid the said sum, though requested, and though said sixty days have elapsed, and though the said plaintiff has offered to first deduct the amount of the said premium note, if unpaid, and all sums due or coming due to said defendants from said plaintiff when said loss became due.

And also for that the said Suchet Mauran, the second, the plaintiff, is a citizen of the State of Rhode Island, one of the United States of America, and resides at Providence in said State of Rhode Island; and that the said Mercantile Marine Insurance Company, the defendants, are a corporation established in Boston, in the State of Massachusetts, one of the United States of America, by the laws of the said State of Massachusetts, and having their usual and principal place of business in said Boston; and that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars.

And the said plaintiff further says that on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and sixty, he was owner of the ship Marshall; and the said defendants in consideration of a certain premium, to be paid to them by said plaintiff, made to him at said Boston on said twenty-eighth day of November, a certain other policy of insurance upon the said ship

for and during the term of one year, the risk to begin at the time when policy No. 15,704 by the said company on the same vessel should terminate, and if said ship should be on a passage at the end of said term, the risk to continue at pro rata premium until her arrival at her port of destination at pro rata premium; and said defendants thereby promised the said plaintiff to insure to him the sum of ten thousand dollars upon the said ship, for the said term and until said arrival, against the adventures and perils of the seas, fire, enemies, pirates, assailing thieves, restraints, and detainments of all kings, princes, or people of what nation or quality soever, barratry of the master, (unless the insured were owner of the vessel,) and of the mariners, and all other losses and misfortunes which had or should come to the damage of the said ship or any part thereof, to which insurers were liable by the rules and customs of insurance in Boston; and in case of loss, to pay such loss in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to said defendants from said plaintiff, when such loss should become due, being first deducted; and all sums coming due being first paid or secured to the satisfaction of the president and directors of said defendants, they discounting interest for anticipating payment; and it was also therein agreed that in case of capture or detention the insured should not have the right to abandon therefor until proof should be exhibited of condemnation or of the continuance of the detention (by capture or other arrest) for at least ninety days; and it was also therein agreed that the insurers should not be answerable for any charge, damage, or loss which might arise in consequence of seizure or detention for or on account of illicit or prohibited trade, or trade in articles contraband of war; and in the margin of said policy, made as aforesaid, the said ship was warranted by the assured free from loss or expense arising from capture, seizure, detention, or the consequences of any attempt thereat, any stipulations in said policy to the contrary notwithstanding. And it was in said margin also provided and agreed that it should be understood that the said defendants should not be exempt from the risk of ordinary piracy; and the said plaintiff says that the said term of one year began thereafter, to wit, on the twenty-ninth day of said November, at noon, and that the said ship Marshall, being and continuing to be owned as aforesaid, and within the said term of one year, to wit, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and sixty-one, while on her lawful voyage from Havre, in France, to New Orleans, in the State of Louisiana, one of the United States of America, and while within the Mississippi river, and in the port of said New Orleans, within said State of Louisiana, was by assailing thieves attacked and forcibly taken away from and
4 out of the control of the said plaintiff, and thereby, by the adventures, perils, and misfortunes agreed to be insured against by the said defendants as aforesaid, was wholly lost to the said plaintiff; and said defendants had notice of said loss thereafter, and more than sixty days before the commencement of this action, to wit, on the twenty-third day of August, in the year of our Lord one thous-

and eight hundred and sixty-one, and were bound to pay to said plaintiff the said sum of ten thousand dollars in sixty days after said notice; yet the said defendants have not paid the said sum, though requested, and though the said sixty days have elapsed, and though the said plaintiff has offered to first deduct the amount of the said premium note, if unpaid, and all sums due or coming due to said defendants from said plaintiff when said loss became due; to the damage of the said Suchet Mauran, 2d, as he says, the sum of twenty thousand dollars.

Annexed to the declaration in the writ is a copy of a policy of insurance in words and figures following, namely:

A.

No. 15,884.—*By the Mercantile Marine Insurance Company in Boston.*

This policy of insurance witnesseth, that the president and directors of the Mercantile Marine Insurance in Boston do, by these presents, cause Suchet Mauran, 2d, for whom it concerns, payable to S. Mauran, 2d, in case of loss, to be insured, lost or not lost, ten thousand dollars on the ship Marshall, for the term of one year, risk to begin at the time policy No. 15,704 by this company on said vessel terminates.

Risk begins November 29, 1860, at noon.

If on a passage at the end of the term, the risk to continue until arrival at port of destination at pro rata premium. Prohibited from loading grain in bulk. Prohibited from the river and Gulf of St. Lawrence between September 1 and May 1.

Sum insured, $10,000.

Whereof is master for this present voyage Sprague, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is, or shall be, named or called, beginning the adventure upon the said ship, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

Freight val'd at $ Including prem.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accidents, without prejudice to this insurance.

Touching the adventures and perils which the said insurance company are contented to bear and take upon them in this voyage, they are of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people, of what nation or quality so-

Vessel valued at $48,000, Including prem.

ever, barratry of the master, (unless the insured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said ship or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston, provided that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flax seed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel, or freight, unless it amount to five per cent., exclusive in each case of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. It is further agreed that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged. And that the company shall not be answerable for loss or damage, by wet or exposure to the elements, of goods insured as on deck. And in case of any loss or misfortune it shall be lawful for the insured, his factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said ship, or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said insurance company to the insured, his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them no this insurance by the insured at and after the rate of seven per cent.; to add one per cent. if in the North Sea between October 1 and March 1, and one per cent. for each passage with cargo of guano, coal, salt, iron, copper ore, marble, or slate, and one per cent. for each passage into the Bay of Fundy between September 1 and May 1.

valued at } including prem. }

Premium.. $700
Policy..... 1
$701

And it is hereby agreed that if the insured shall have made any other insurance upon the ship aforesaid, prior in date to this policy, then the said insurance company

Payable in 14 months, or two months after termination of risk.

shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage or from one port of lading or discharge to another; and the said insurance company shall return the premium, or a ratable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance, provided that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any insurance upon the said ship, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said insurance company shall, nevertheless, be answerable to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall, accordingly, be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed that in case of capture or detention the insured shall not have the right to abandon therefor until proof is exhibited of condemnation or of the continuance of the detention (by capture or other arrest) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

If there be any lime on board fifty per cent. to be added to the premium for the passage.

Warranted by the assured free from loss or expense arising from capture, seizure, detention, or the consequences of any attempt thereat, any stipulations in this policy to the contrary notwithstanding. It being understood that this company is not exempt from the risk of ordinary piracy.

It is also agreed that the insurers shall not be answerable for any charge, damage, or loss which may arise in consequence of seizure or detention for or on account of illicit or prohibited trade or trade in articles contraband of war; but the judgment of a foreign consular or colonial court shall not be conclusive upon the parties as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed that this policy shall be void in case of its being assigned, transferred, or pledged without the previous consent in

Partial loss on sheet iron, iron wire, braziers' rods, iron hoops, and tin plates is excepted.

It is specially agreed that instead of deducting one-third for new on the article of copper sheathing there shall be deducted two and a half per cent. on the net cost of recoppering after deducting the value of the old copper and nails for each and every month the copper shall have been on the vessel at the time of recoppering, and if the copper shall have been on forty months or more the cost of recoppering shall be wholly borne by the assured.

writing of the insurers. It is also agreed that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay under an adjustment as of a partial loss shall exceed half the amount insured, and in case of a total loss of the vessel, with salvage, the amount allowed out of the salvage to the officers and crew for wages earned or services rendered previously to the loss shall be considered as so much of the salvage applied to the use of the shipowners, even although the same should be allowed or paid under the name of salvage and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed that if any dispute shall arise relating to a loss on this policy it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company is not liable for wages or provisions, except in general average when customary at port of destination.

In witness whereof the president of the said Mercantile Marine Insurance Company hath hereunto subscribed his name and caused the same to be countersigned by their secretary, at their office in Boston, this twenty-eighth day of November, one thousand eight hundred and sixty.

NATH. MARIAN, *President*.

WM. B. COFFIN, *Secretary*.

The writ in this case is dated May 2d, A. D. 1864, and was duly entered at the May term of this court, A. D. 1864, when and where the parties appeared, by their respective attorneys, and the same was thence continued from term to term to the present term, when the following pleas are filed, namely: And the said defendants come and defend and say that they did not undertake or promise in manner and form as the plaintiff hath alleged, and of this they put themselves upon the country.

By J. J. STORROW,
Their Attorney.

And the said Suchet Mauran, 2d, as to the plea of the said Mercantile Marine Insurance Company above pleaded, and whereof they have put themselves upon the country doth the like.

SUCHET MAURAN, 2D,
By G. A. SOMERBY,
His Attorney.

Issue being thus joined, the cause, after a full hearing, is committed to a jury sworn according to law to try the issue, who, after hearing all matters and things concerning the same, return their verdict therein upon oath and say: The jury find that the defendants did not promise in manner and form as the plaintiff hath above there-

of declared against them. Thereupon it is considered by the court that said Mercantile Marine Insurance Company, defendants, do recover against said Suchet Mauran, 2d, plaintiff, their costs of suit, taxed at one hundred and twenty-eight dollars and fifty-one cents, (to wit: October 13th, A. D. 1866.)

Upon the trial of the said cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the said Suchet Mauran, 2d, filed his bill of exceptions, which was sealed and allowed by the court, and is in words and figures following, namely:

Circuit court of the United States, Massachusetts district, May term, 1866.

SUCHET MAURAN, 2D,
vs.
THE MERCANTILE MARINE INSURANCE COMPANY.

Be it remembered that this cause came on for trial at the May term, 1866. It was an action of assumpsit brought by plaintiff, who was, at the time of making the policy hereinafter named by defendants, and ever since has been and now is a resident and citizen of Providence, in the State of Rhode Island, against the defendants, who, at the time of making said policy by them, were, and ever since have been, and now are, a corporation duly organized and established under the laws of the Commonwealth of Massachusetts, having their place of business at Boston, in said Massacnusetts, to recover the sum of ten thousand dollars for loss of the ship Marshall by perils of the sea. Said action is founded on a policy of insurance made by the defendants as said corporation, at said Boston, on the twenty-eighth day of November, 1860, of that date, for one year from the twenty-ninth day of November, 1860, at noon. A copy of said policy is annexed to the declaration, and is marked [A,] and is made part of this bill of exception.

The defendants pleaded the general issue, and issue was joined thereon by the plaintiff. At the trial the policy was introduced and read in evidence by the plaintiff, together with the copy of the register of said ship Marshall, dated the 25th day of November, 1859, a copy of which is hereto annexed marked [B,] and is made part of the case, and the ownership and possession by plaintiff of said ship Marshall, an American ship, and as sailing under and by authority of the laws of the United States at the time of said insurance by defendants as aforesaid, and from that time to the time of the alleged loss of said ship, were admitted by the defendants at the trial. The plaintiff also introduced and read in evidence, as notice of said alleged loss of said ship to said defendants, the paper dated May 29, 1861, the reception of which at said time was admitted by defendants at the trial; a copy of said paper is hereto annexed, marked [C,] and made part of the case, to which alleged notice the defendants replied by letter, dated June 4th, 1861, which it was admitted at the trial was received by plaintiff, a copy of which is hereto annexed, marked [D,] and made part of the case; to which last letter the plaintiff sent the

letter dated August 22d, 1861, which it was admitted at the trial was then received by defendants; a copy of said letter is marked [E,] and made part of the case; to which last letter the defendants sent the letter dated August 23d, 1861, which it was admitted at the trial was then received by plaintiff, a copy of said letter is hereto annexed, marked [F,] and is made part of the case; to which last letter the plaintiff sent the letter dated October 29th, 1861, which it was admitted at the trial was then received by defendants, a copy of which is hereto annexed and marked [G,] and is made part of the case; to which last letter the defendants sent the letter dated November 1st, 1861, which it was admitted at the trial was then received by plaintiff, a copy of which is hereto annexed, marked [H,] and made part of the case. The plaintiff then introduced and read in evidence the deposition of Henry B. Morton, a copy of which deposition, so far as admitted by the court and read to the jury in evidence, is hereto annexed, and marked [I,] and is made part of the case. The original policy of the said Mercantile Marine Insurance Company, named in said declaration, and the policy of insurance declared on was also offered in evidence by the plaintiff, and it was admitted by the defendants at the trial that the insurance against loss of said ship Marshall, by said defendants, under the policy declared on in plaintiff's declaration, commenced at noon on the 29th day of November, 1860. The plaintiff here rested his case, and the defendants, without offering any testimony on their behalf, requested the court to rule as a matter of law that the plaintiff could not recover upon the foregoing evidence which had been put in, read, and submitted to the jury. The presiding justice at the trial of the cause thereupon ruled and instructed the jury that in judgment of law the evidence would not warrant a verdict in favor of the plaintiff, and that in judgment of law the verdict should be for the defendants. The jury thereupon rendered their verdict, "That the jury find that the defendants did not promise in manner and form as the plaintiff hath above thereof declared against them;" which verdict was duly recorded. The plaintiff then and there excepted to the ruling and instruction and direction given as aforesaid by the presiding justice of the court, and requested that his exceptions might be signed and sealed, and inasmuch as the matters herein set forth do not appear in the record, the same have been reduced to writing, and being found to be correct, this bill of exceptions is allowed by the court and directed to be filed as on the seventh day of June, 1866, before the jury left the bar.

[SEAL.] NATHAN CLIFFORD,

Associate Justice of the Supreme
Court of the United States.

[B.]

No. 333. Temporary. No. 333.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels," Suchet Mauran, 2d, of Providence, State of Rhode Island, having taken or subscribed the oath required by the said act; and having sworn that he is the only owner of the ship or vessel called the Marshall, of Providence, whereof Elisha P. Sprague is at present master, and a citizen of the United States, as he hath sworn; and that the said ship or vessel was built at Quincy, State of Massachusetts, A. D. 1859, as per certificate of George Thomas, the builder, on file in this office. And F. A. Durivage, assistant deputy surveyor for this district, having certified that the said ship or vessel has two decks and three masts; and that her length is one hundred and seventy-five feet; her breadth, thirty-six feet; her depth, twenty-two feet; and that she measures ten hundred forty-six tons thirty-three ninety-fifths; that she is a ship; has a round stern and a figure-head; and the said Suchet Moran, 2d, having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said ship has been duly registered at the port of Boston.

Registry of ves's. United States.

[L. S.]

F. Bigger, register.

[L. S.]

Arthur W. Austin, collector.

[L. S.]

C. D. Lincoln, dep'y naval officer.

Given under our hands and seals at the port of Boston, this 25th day of November, in the year one thousand eight hundred and fifty-nine.

CUSTOM-HOUSE, BOSTON, COLLECTOR'S OFFICE,
May 2*d*, 1862.

This is to certify that the within is a copy of the original, as appears by the records of this office.

Given under my hand and seal of office the day and year above written.

[L. S.] J. Z. GOODRICH, *Collector.*

6 [C.]

PROVIDENCE, *May* 29, 1861.

President & Co.:

DEAR SIRS: I have rec'd a letter from Meeker, Knox & Co., New Orleans, under date 21st May, consignees of the ship Marshall, advising that the ship Marshall had been seized by pirates at the bar of the Mississippi river, and carried into New Orleans. Our friends wrote me that measures have been taken to obtain a release of the ship, whether successful or not remains undecided. I thought it advisable to give you all the information I possess on the subject, that

you might take such action in the premises as you deem proper. I will keep you advised of any further information I may get.

I remain, very resp'y, yours,

SUCHET MAURAN, 2d.

To the Prest. of the Mercantile Marine Insurance Co.

[D.]

MERCANTILE MARINE INS'CE OFFICE,
Boston, June 4th, 1861.

Suchet Mauran, 2d, esq., Providence:

DEAR SIR: In reply to your of the 29th ult'o, we would state that as the ship was warranted free from any loss or expense from capture, seizure, &c., &c., except ordinary piracy, and as the facts you mention that she was seized and carried into New Orleans proves it was not a case of ordinary piracy, we do not perceive that the office has any interest in the subject of your letters.

Respectfully yours, &c.,

NATH. MERIAM, *Pres'dt.*

[E.]

PROVIDENCE, *Aug.* 22*d*, 1861.

DEAR SIR: I gave you notice on the 29th May of the seizure of the ship Marshall by pirates in the Mississippi river, and of the intention of the master to get her release if possible. She has now been detained out of my control over ninety days, and I hereby give you notice that I abandon her to your company as far as she is insured by policy No. 15,884, and claim payment of a total loss.

I remain, very respt., yours,

S. MAURAN, 2d.

To the Prest. of the Mercantile Marine Ins. Co.

[F.]

MERCANTILE MARINE INS'CE OFFICE,
Boston, August 23*d*, 1861.

Suchet Mauran, 2d, esqr., Providence:

D'R SIR: As the ship Marshall was captured by a privateer and taken into New Orleans, and as the ship was warranted free from loss or expense from capture, seizure, &c., we do not perceive that there can be any claim upon the company growing out of such capture, and of course your abandonment is not accepted.

Res'p'y yours, &c.,

NATH. MERIAM, *Pres't.*

[G.]

PROVIDENCE, *Oct.* 29, '61.

DEAR SIR: Referring you to my abandonment of the ship Marshall

under your policy No. 15,884, as the loss is now due by the terms of the contract, I beg to ask whether I shall draw for the amount or expect a remittance from you.

I remain, very resp'y, yours,

S. MAURAN, 2d.

To the Pres't of the Mercantile Marine Insurance Co.

[H.]

MERCANTILE MAR. INS'CE OFFICE,
Boston, Nov. 1st, 1861.

Suchet Mauran, 2d, esq., Providence:

DEAR SIR: We must refer you to ours of the 23d August last, as containing a sufficient reply to your favor of the 29th ult'o, which came to hand yesterday.

Respectfully yours, &c.,

NATH. MARIAM, *Pres'dt.*

[I.]

Deposition of Henry B. Morton, late chief mate of ship Marshall, taken before R. E. Stilwell, U. S. commissioner in New York, April 1, 1865, in the suit named in the annexed commission, separate and apart from any other person. Said witness was duly sworn, and the interrogatories and cross interrogatories propounded in their order, and the answer given taken down by me, and the same was subscribed by the witness in my presence.

Circuit court of the United States. Massachusetts district, Oct. t., 1864.

SUCHET MAURAN, 2D, plaintiff,
vs.
MERCANTILE MARINE INSURANCE CO., WASHINGTON Insurance Co., Alliance Insurance Co., Boston Insurance Co., Equitable Safety Insurance Co., defendants.

Interrogatories propounded by the plaintiff to be answered by Henry B. Morton:

Int. 1. What is your name, age, residence, and occupation?

Ans. My name is Henry B. Morton; 33 years of age; reside in Portland, Maine, and follow the sea; am at present acting ensign in the U. S. navy.

Int. 2. State whether or not you were on board the ship Marshall on a voyage from Havre, in France, in the latter part of March, A. D. 1861; and if you were, in what capacity?

Ans. I was on board said ship as chief mate.

Int. 3. State, if you know, who was master of the Marshall when she left Havre, as mentioned in the last preceding interrogatory, and when she sailed from Havre, what was her port of destination, and

in what State her port of destination was, and whether she carried freight or not.

Ans. Elisha P. Sprague was master; she sailed from Havre about 23d of March, 1861, for New Orleans, in ballast.

Int. 4. When, if at all, on said voyage from Havre, did the Marshall arrive off the bar of the Mississippi river?

Ans. About the 16th May, 1861.

Int. 5. When did the Marshall, on said voyage, make the land first near the mouth of the Mississippi river, if at all, and where did she first make the land?

Ans. She made the land at the mouth of the river on the 16th of May, at the South Pass.

Int. 6. What, if anything, was done by the master of the Marshall about procuring a pilot while the Marshall was outside of the bar of the Mississippi river?

Ans. The master ordered signals set for a pilot in the usual form; the pilot came aboard.

Int. 7. If any pilot came on board the Marshall outside of the bar of the Mississippi river, on what day, or about what time of the day, did he come on board, and at what place, with reference to the passes of the Mississippi river, and how far from New Orleans?

8 Ans. On the 16th May, 1861, at about 3 o'clock in the afternoon, I think, the pilot came on board off the South Pass of the Mississippi river, about nine or ten miles at sea outside of the pass. I have forgotten the distance of the pass to New Orleans.

Int. 8. How far from the nearest shore, and from what shore or land, was the Marshall when said pilot came on board?

Ans. Prom the South Pass light-house, about nine miles from land.

Int. 9. What conversation, if any, within your knowledge, occurred between the master of the Marshall and the said pilot, after he came on board, respecting the Marshall proceeding to New Orleans?

Ans. The master asked the pilot if freights were quick up to town; and the pilot answered they were three farthings, and that there were then thirty loaded ships on the bar waiting a rise of the tide to get over.

(Interrogatories and answers numbered ten to thirteen, inclusive, omitted.)

Int. 14. Before the said pilot came on board of the Marshall, what vessel or vessels, if any, were seen from the Marshall to pass out over the bar of the Mississippi river to go to sea; and how laden, if laden at all?

Ans. We passed a schooner very soon after receiving the pilot on board, loaded with cotton, bound out, steering southward, which had come on the bar; we saw her, I think, before the pilot came on board.

Int. 15. If, after said conversation between the pilot and the master of the Marshall, the Marshall proceeded on her way, and for what place, and in what manner did she proceed?

Ans. She proceeded on her way towards Pass L'Outre—she pro-

ceeded in the usual manner. We had light winds during the night, and thick fog. We tacked ship and stood to the eastward.

Int. 16. What was the course of the Marshall during the night after the said pilot came on board?

Ans. I can't give the exact course; she stood easterly during the night.

Int. 17. Who, if you know, gave directions for the course of the Marshall after the said pilot came on board, if any were given; and what were the directions?

Ans. The pilot gave directions for the course of the Marshall; the wind being ahead she could not lay directly on her course, consequently by an easterly course was the nighest she made to her proper course.

Int. 18. What vessel or vessels, if any, were first seen from the Marshall, and spoken, the next day after the said pilot came on board, and at what hour, and where?

Ans. The next morning we made a steamer very soon after daylight, some two hours, perhaps, and we set signals for her. She run down towards us within hailing distance, and asked us if we wanted steam; the wind being light, and thick, foggy weather, the captain replied that we did. It proved to be the steamer Ivy. This was about seventeen or eighteen miles from the South Pass.

Int. 19. If any steamer spoke to the Marshall about daylight on the 17th day of May, A. D. 1861, what steamer was it, and where was she when she spoke the Marshall, and what inquiries, if any, did she make?

Ans. I have answered this question in my preceding answer, except that the Ivy took the vessel in tow in the usual manner, and proceeded over the bar.

Int. 20. What answer or answers, if any, did the master of the Marshall make the inquiries from said steamer?

Ans. They asked from on board the steamer if we wanted steam, and the master said he did.

Int. 21. What was the appearance of the said steamer when she spoke the Marshall, as indicating her business or purposes?

Ans. She had her general appearance as we had seen her before, as we had been trading at New Orleans for two or three years. She had the general appearance of a tow-boat.

Int. 22. What, if anything, was next done on the part of the said steamer with respect to the Marshall, and on the part of the Marshall with respect to the said steamer?

Ans. The steamer gave the Marshall her heaving line, and we made fast to the end of our hawser, and they hauled the end of the hawser on board and made fast to their boat, and went ahead of the ship and took the ship in tow.

Int. 23. How, if any way, did the said steamer, the H. V. Ivy, make fast to the Marshall?

Ans. I have answered by saying that an end of the line was made fast on board of the steamer and the other on board of the Marshall, and the Ivy pulled her along.

Int. 24. State whether the steamer Ivy took the Marshall in tow, and where she towed the Marshall, and on what day, and how she did so, if she did so at all?

Ans. The Ivy took her in tow and towed her a mile and a half or two miles inside of the bar, and then the steamer Music came alongside and made fast while she was still in tow of the Ivy. I should think that this was from 12 to 3 o'clock on the 17th May, 1861.

Int. 25. At the time the said steamer Ivy made fast to the Marshall and commenced towing her, what was the condition of the steamer with reference to any flag or colors flying or visible?

Ans. She had no flag or colors flying or visible at the time we made fast to her, nor while she was towing us.

Int. 26. At the time mentioned in the last preceding interrogatory, what cannon, guns, or other armament had the said steamer Ivy, if any, visible?

Ans. None to be seen.

Int. 27. When the steamer Ivy made fast to the Marshall outside of the bar of the Mississippi river, what was the appearance of the persons on board the steamer, visible from the Marshall, as to numbers, arms, and uniforms?

Ans. There were only four or five men visible, including the captain and wheelsman, and no arms or uniform visible.

Int. 28. When the steamer Ivy made fast to the Marshall, what, if anything, did the conduct of the steamer, and the persons on board of her, indicate with respect to her friendliness or hostility in her designs?

Ans. She indicated a friendly disposition; nothing hostile looking about her.

Int. 29. What armament or means of defence had the Marshall, if any?

Ans. She had none.

Int. 30. What officers and crew had the Marshall when she was taken in tow by the Ivy?

Ans. She had three officers and fourteen men, all told.

Int. 31. At the time the steamer H. V. Ivy took the Mar-
9 shall in tow, or at any time afterwards, was any letter of marque and appraisal, or any commission as a public or private armed vessel exhibited or mentioned by any person or persons on board of or from the Ivy?

Ans. There was not.

Int. 32. To what class of people did the persons on board the Ivy appear to belong—whether seamen or citizens, or what, if anything, was peculiar or unusual in their appearance?

Ans. After her coming alongside and going ahead of the Marshall we had no means of seeing anybody on board the boat Ivy, except the captain or steersman, or one or two men. There was nothing unusual or peculiar in their appearance.

Int. 33. State whether, if you know, there was existing at the time the Marshall arrived off the mouth of the Mississippi, or shortly before, any custom or usage for sailing vessels entering the passes at

the mouth of the Mississippi river from the Gulf of Mexico to be towed over the bar by steamers? and if there was, state what was the custom or usage.

Ans. Nothing other than stated before, that the other passes were blocked up. There was no other custom or usage.

Int. 34. At what place, with reference to Pass L'Outre, did the steamer Ivy make fast to the Marshall and commence towing her, and how far from land, and from what land, if you know?

Ans. About 18 miles from land—from the South Pass. I suppose 20 or 25 miles from Pass L'Outre.

Int. 35. After the steamer Ivy had towed the Marshall over the bar into the Mississippi river, what was the course of the Marshall, and by what means did she proceed, if at all?

Ans. The course was up the river towards New Orleans; but she proceeded up the river by the steamer Music, after she had made fast, so far as the pilot village, or what is more usually termed the "Belize."

Int. 36. When and where did the Ivy cease to tow the Marshall?

Ans. From 3 to 4 miles inside the bar; after the Music was made fast she continued towing the Marshall, while the Music was making fast.

Int. 37. State particularly who had control the Marshall after the pilot came on board, and during the towing of the Marshall over the bar at the mouth of the Mississippi river, and after the Marshall was towed inside of the bar, if you know.

Ans. The pilot had charge of her, as pilots usually do.

Int. 38. State whether or not any other vessel approached the Marshall when outside the bar, at the mouth of the Mississippi river, and if any such vessel did approach, what vessel was it, and what was the manner of her approaching the Marshall, and whether she came alongside of the Marshall.

Ans. The steamer Music, as before mentioned by me. She came down the river as we were proceeding up the river, and came round under our stern, then came up along on our port side to make fast in the usual form of steamers who are going to make up their tow to proceed up the river.

Int. 39. If you saw any vessel come alongside of the Marshall after she came inside the bar, where was the steamer Ivy at the time and what was she doing?

Ans. The steamer Ivy was still towing us ahead, and this boat came alongside.

Int. 40. If you say the steamer Music came alongside of the Marshall after the Marshall came inside of the bar at the mouth of the Mississippi river, where did this happen, with reference to Pass L'Outre, and how far from land, and what land, and what was the appearance of the Music with respect to nationality, flags, or colors, and with respect to her business?

Ans. The Music came alongside a mile and a half or two miles inside of the bar. It might be a half a mile from land on either side of the river. The Music had no flags or colors of any kind until she

showed them at our peak; she hauled down our colors and run up her colors, what they called the confederate flag, with ours under it, and some one among the crowd stepped along to the captain and pilot, and said, "Your ship is a prize to the Confederate States;" previous to this she had no representation of any other business than as a tow-boat, and the crowd rushed out from hidden places and took possession of us.

Int. 41. If you say that the steamer Music came alongside of the Marshall inside the bar, and within the river Mississippi, what first occurred afterwards, if anything, between the Music and the Marshall?

Ans. At the time the Music was making fast, the crowd of ruffians made their appearance and rushed over our rail.

Int. 42. State, if you know, whether the steamer Music made fast to the Marshall while inside of the bar and within the Mississippi river, and whether any person or persons from on board the Music came on board the Marshall soon after; and if any, what person or persons.

Ans. I have already answered this question in my fortieth answer. I cannot state what person or persons they were, except there were some 40 or 60.

Int. 43. When the Music first came alongside of the Marshall, how many persons were visible on board of the Music, and what was their appearance; whether that of seamen, soldiers, or citizens?

Ans. There were only four to be seen, and they appeared like the usual men and officers of such vessels.

Int. 44. Who, if any, within your knowledge first came on board the Marshall from the steamer Music, and what was said or done by the person or persons so coming on board the Marshall?

Ans. I don't know anyone in particular, they all made a rush; part stopped on the main deck, part went on the quarter deck; they first hauled down our old flag and then run up their flag with ours under it. In the meantime another one went along by the master and said: "Your ship is a prize to the confederate government," with a big horse-pistol in his hand.

Int. 45. What was the appearance of the steamer Music when she came alongside the Marshall, with reference te friendliness or hostility?

Ans. She had the general appearance when she first came alongside of a river tow-boat, and had no hostile appearance until after she was made fast, when the rush was made from hidden and secret places.

Int. 46. What was the condition of the Music with respect to cannon or warlike implements visible, and what armament had she, if any?

Ans. After she had made fast, and taken possession of the ship, she uncovered a gun on the forward end of the forecastle, which was covered with a tarpaulin. I don't know that she had any other warlike implements, except such as the men were armed with.

Int. 47. State whether or not any change in the number or appearance of the persons visible on board the Music occurred soon after she came alongside of the Marshall, and if any change did occur, what was it?

Ans. I have already answered this question in my forty-sixth answer. There was a change in the revolvers, and they appeared like a set of desperadoes and ruffians.

Int. 48. State whether or not any person from the Music took the Marshall in charge after coming alongside, and if anything of the sort occurred, state how it was done, and by whom.

Ans. One of the men among the gang says to the master, "Your ship is a prize to the Confederate States." I don't know his name.

Int. 49. Who, if any one, appeared to be in command of the Music, and what uniform or arms did he wear, and was he addressed by those about him from the Music by any title or name, and if by any, what title or name?

Ans. He was addressed by those about him by the title of captain. He wore an old sword, but had no uniform.

Int. 50. State whether or not any resistance was made by the master of the Marshall, or any one on board, to the acts of the persons from the Music; and if not, why not, if you know?

Ans. There was no resistance made, for the reason that our number was small and unarmed, and that the Ivy may have been in the same condition as far as men and arms on them were concerned.

Int. 51. After the Marshall was forcibly taken away from the control of the master by any person or persons from the steamer Music, what authority, if any, was given by such person or persons for such acts?

Ans. I don't know of their having any authority for doing so.

Int. 52. After the Music came alongside of the Marshall, where did the Marshall proceed, and in what manner, and under whose control?

Ans. She proceeded up so far as the "Belize" in tow of the Music under charge of the ruffians belonging to her that were then on the ship, and there came to an anchor. And she lay there until the next afternoon, with about thirty or forty of these fellows on board, and most of the time with the steamer alongside. We lay there until the next afternoon, and proceeded up the river to New Orleans.

Int. 53. State whether or not any letter of marque or reprisal, or any commission as a private or public armed vessel was shown by or appeared to be in possession of any of the persons on board the steamer Music.

Ans. There did not, any further than one of them stated that they were commissioned by the confederate government. There was nothing shown or seen or known of anything of the kind.

Int. 54. What was the appearance of the persons on board the steamer Music visible after the Marshall was boarded from the Music, as indicating what class of people they were—whether seamen or boatmen or soldiers or citizens; or, if the latter, what class of citizens?

Ans. They indicated a class of New Orleans levee "Hoosiers."

Int. 55. State, if you know, whether the Marshall remained at New Orleans; and if she did, in what condition, and in whose control, and whether anything had happened to the cabin, or anything therein or thereabouts; and if anything, what?

Ans. She got under weigh on the eighteenth, and she arrived at New Orleans, I think, on the nineteenth in the afternoon. We came to an anchor in the middle of the river, abreast of the city, and was kept there one night in charge of the desperadoes, and next morning taken out and marched up to prison in rank and file and shut up. The cabin was all broken open aft—every room rummaged; captain's desk broken open, papers taken, and a large quantity of clothing and nautical instruments taken away.

Int. 56. State, if you know, whether the master or owners of the Marshall ever recovered control of her after the occurrence near the mouth of the Mississippi river.

Ans. They did not.

Cross-interrogatories propounded, on behalf of the defendants in the above-entitled action, to Henry B. Morton, a witness of the plaintiff:

Cross-int. 1. How far above the bar was the Marshall when the Music came alongside?

Ans. I should say a mile and a half or two miles.

Cross-int. 2. How far was she above the light?

Ans. She was six or seven miles above the light at Pass L'Outre.

Cross-int. 3. How wide is the river at the place were the Music came alongside?

Ans. I should think from a mile to two miles wide.

Cross-int. 4. Does not the tide ebb and flow at that place?

Ans. It does slightly.

Cross-int. 5. Whereabouts in the ship was you, and what were you doing all the time the Ivy was towing you?

Ans. Part of the time I was forward and part of the time at the after end. I was not doing much of anything while the Ivy was towing us—looking after the clearing up decks.

Cross-int. 6. Did anybody from the Ivy come on board the Marshall? and if yea, was it before or after the Music came alongside?

Ans. No one came on board from the Ivy, to my knowledge.

Cross-int. 6½. Was the Ivy alongside, or was she towing ahead with a hawser?

Ans. Towing ahead with a hawser.

Cross-int. 7. Did the Ivy fire any guns at the Marshall.

Ans. She did not.

Cross-int. 8. Did the Ivy exhibit any cannon or guns, or did she indicate to you in any way that she was anything different from an ordinary tow-boat?

Ans. She did not.

Cross-int. 9. Did she show any colors? If so, please describe them, and state when she showed them?

Ans. She did not show any colors, I think.

Cross-int. 10. When did you first see the Music?

Ans. When she came down the river, after we were inside the bar.

11 Cross-int. 11. What was you doing, and whereabouts in the ship were you when the Music came alongside?

Ans. I was part of the time aft and part forward, assisting the Music to make fast to us.

Cross-int. 12. What time of the day was this?

Ans. I think it was somewhere between 12 and 3. I could not tell the time of day.

Cross-int. 12¼. Did you have any communication with the commander of the Music? and if you had, where were you standing at the time, and who was with you, and with the commander?

Ans. I did not have any conversation with the commander at the time.

Cross-int. 13. How many persons came on board the Marshall from the Music?

Ans. I should say from 45 to 60.

Cross-int. 14. How long did they stay on board the Marshall?

Ans. They stayed on board from the 17th until we arrived at New Orleans, and we left them aboard when we were taken out.

Cross-int. 15. What did they do while on board?

Ans. They did nothing except hoist up a jib once or twice while going up the river, and heave up the anchor when she got under way from the Belize.

Cross-int. 16. What were you doing all the time—state particularly—state what part of the ship you were in?

Ans. Part of the time I was on the main deck, some of the time I was on the quarter deck, and part of the time in the cabin doing nothing.

Cross-int. 17. Did not the commander of the Music, or some one from the Music, demand of the captain of the Marshall his ship's papers?

Ans. I don't know whether he did or not.

Cross-int. 18. Did not Captain Sprague, the captain of the Marshall, give up his ship's papers to some one from the Music?

Ans. I don't know whether he did or not.

Cross-int. 19. Did not Captain Sprague ask the commander of the party that boarded you, or some one of that party, by what authority he assumed to act, or some questions to that effect?

Ans. He did ask him by what authority he acted, and his reply was "from the Confederate States."

Cross-int. 20. Did not some person from the Music, in answer to that question, show to Captain Sprague some paper? and if yea, state what it was.

Ans. I did not see any papers shown on either side.

Cross int. 21. Was not that paper a letter of marque or a commission from Jefferrson Davis or the Confederate States?

Ans. I don't know that there was any commission. I did not see any papers.

Cross-int. 22. Did you read it, or hear it read?

Ans. I did not.

Cross-int. 23. Was it not signed by Jefferson Davis, as President of the Confederate States, or something of the sort?

Ans. I don't know anything about it.

Cross-int. 24. Were you with Capt. Sprague the whole time that the Music was alongside.

Ans. I was not alongside of him all the time, but was about different parts of the ship.

Cross-int. Did you hear or see anything that Capt. Sprague said and did, and all that was said to him during that time?

Ans. I don't know whether I did. I think I heard pretty much all that was said while they were in communication with each other.

Cross-int. 26. Did the Music at any time show any colors? If so, what colors?

Ans. She showed a color, or red, white, and blue, that they called confederate flag, while going up the river.

Cross-int. 27. When and where did the Music leave you?

Ans. She didn't leave at all while I was on board; we were taken ashore in a small tug-boat, at New Orleans, and she was then alongside of the Marshall.

Cross-int. 28. Did you not ask some one from the Music by what authority they were acting, and why they took possession of the Marshall, and some questions to that effect?

Ans. I don't know but I did ask a number of them.

Cross-int. 29. If you did ask such a question, what answer was made to you?

Ans. The answer was they were acting for Jeff.

Cross-int. 30. Did you know why they took possession of the Marshall?

Ans. I suppose for plunder, I don't know any other reason.

Cross-int. 31. What did you suppose was the reason?

Ans. I suppose the reason was, after what they could get, I didn't suppose that was the reason when they were coming for us.

Cross-int. 32. When and where did the Marshall first anchor after she was taken possession of by the Music?

Ans. At the Belize, on 17th May, 1864.

Cross-int. 33. When did she leave that anchorage, and where did she then proceed?

Ans. She left that anchorage on the 18th, and proceeded to New Orleans.

Cross-int. 34. When did you last see the Marshall, and where was she then?

Ans. I last saw her somewhere about the fifth of June, laying at the levee at New Orleans.

Cross-int. 35. Was she fast to the levee when you saw her?

Ans. She was.

Cross-int 36. Who, if any one, was on board of her?

Ans. There were two or three on board, I don't know who they were.

Cross-int. 37. Were the persons on board of her part of the crew of the Music, if you know?

Ans. There was some of the crew that come from the Music on board of her. I don't know whether they were part of the crew that remained on board the music or not.

Cross-int. 38. When you left the Marshall where did you go?

Ans. I went on shore, to prison.

Cross-int. 39. What place did you first go to in New Orleans?

Ans. To prison. I don't know what street.

Cross-int. 40. Were you not taken to the prison in New Orleans?

Ans. I was.

Cross-int. 41. Were not the crew also taken to the prison?

Ans. They were.

Cross-int. 42. How long did you and how long did the crew stay in prison?

Ans. I stayed there about four hours. The crew stayed there from a week to ten days.

Cross-int. 43. Why were you taken to the prison?

Ans. I don't know.

12 Cross-int. 44. What reason was given by any one why you or the crew were taken to the prison?

Ans. There never was any reason given.

Cross-int. 45. What reason was given you for discharging you from the prison?

Ans. There was no reason given for discharging. One of my friends came up and interceded and got me out.

Cross-int. 46. Were you not examined before a prize commissioner in New Orleans?

Ans. Not to my knowledge.

Cross-int. 47. Did you not give a deposition in New Orleans concerning the ship Marshall? And if yea, state when it was and before whom?

Ans. I went before what they called the Confederate States marshal, somewhere from 26th to 27th May, and gave a statement of what occurred after being boarded by the pirate.

Cross-int. 48. State, as near as you can recollect, what matters you testified about in said deposition.

Ans. I stated, as near as I can recollect, what I have stated in this deposition. There was no oath taken, and I do not consider I gave a deposition.

Cross-int. 49. Were not others of the ship's company examined before said commissioner?

Ans. The captain was examined by the same man who examined me. I do not know whether the others were or not?

Cross-int. 50. Was not the Marshall libelled and proceeded against in one of the courts in New Orleans?

Ans. I don't know that she was.

Cross-int. 51. When did you leave New Orleans?

Ans. I left New Orleans about the 20th June.

Cross-int. 52. How did you come north from New Orleans?

Ans. I came by railroad, by way of Jacksonville, in Kentucky.

Cross-int. 53. Did you have a pass to come north?

Ans. I did not.

Cross-int. 54. By whom was it signed, and who gave it to you?

Ans. I had none.

Cross-int. 55. Did you take your shirt or any of your clothing with you when you left the Marshall, or did you at any time afterwards get them?

Ans. I took a bundle with me when I left; when I went after what I lost, there was nothing remaining of much account. My chest had been broken open and rummaged, and the cabin broken open and rummaged throughout—bed, bedding, clothing, &c.

(Signed) HENRY B. MORTON.

Subscribed and sworn to before me, this 1st April, 1865.

R. E. STILWELL,
U. S. Commissioner.

A true record.
Attest: JOHN G. STETSON, *Clerk.*

UNITED STATES OF AMERICA, *Massachusetts District, ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Suchet Mauran, 2d, plaintiff, *vs.* the Mercantile Marine Insurance Company, in this court determined.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Boston, in said district, this twenty-fifth day of October, A. D. 1866, and of the independence of the United States the ninety-first.

[SEAL.] JOHN G. STETSON, *Clerk.*

13 UNITED STATES, *ss:*

The President of the United States to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Suchet Mauran, 2d, of Providence, in the State of Rhode Island, plaintiff, and the Mercantile Marine Insurance Company, having their usual place of business at Boston, in said district, defendants, in a plea of the case, a manifest error has intervened to the great damage of the said Suchet Mauran, 2d, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of Decem-

ber next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Salmon P. Chase, esquire, Chief Justice of the said Supreme Court at Washington aforesaid, this twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the ninety-first.

[L. S.] JOHN G. STETSON, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Ass. Jus. U. S. S. C.

14 CIRCUIT COURT OF THE UNITED STATES,
Massachusetts District, ss:

And now here the judges of the circuit court of the United States in and for the district of Massachusetts, make return of this writ by annexing hereto, and sending herewith, under the seal of the said circuit court, as within commanded, a true and attested copy of the record and process in the suit within mentioned, and of all proceedings therein.

In testimony whereof, I, John G. Stetson, clerk of said circuit court of the United States, within and for the district of Massachusetts, have hereunto set my hand and the seal of said court, this twenty-fifth day of October, A. D. 1866.

JOHN G. STETSON, *Clerk.*

15 UNITED STATES OF AMERICA,
Circuit Court of the United States Massachusetts District, ss:

To the Mercantile Marine Insurance Company, having their usual place of business at Boston, in said district, greeting:

You are hereby cited and admonished to be and appear before the Chief Justice and associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, then and there to answer a writ of error sued out of the clerk's office of the circuit court of the United States, Massachusetts district, wherein Suchet Mauran, 2d, is plaintiff in error and you are defendants, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this 22d day of October, in the year of our Lord one thousand eight hundred and sixty-six.

NATHAN CLIFFORD,
Associate Justice Sup. Court U. S.

16 Due sufficient and legal service of the within is admitted.

J. J. STORROW,
For Def'ts.

17 Know all men by these presents, that we, Suchet Mauran, 2d, of Providence, in the State of Rhode Island, as principal, and Edward C. Mauran, of said city of Providence, in State of Rhode Island, and A. A. Frazer, of Boston, Mass., as sureties, are holden and stand firmly bound and obliged unto the Mercantile Marine Insurance Company, a corporation duly established by the laws of the Commonwealth of Massachusetts, having their usual place of business in Boston, in said district of Massachusetts, in the full and just sum of five hundred dollars, to be paid unto the said mercantile Marine Insurance Company, their successors or assigns, to which payment, well and truly to be made, we bind ourselves, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated the 15th day of October, in the year of our Lord one thousand eight hundred and sixty-six.

The condition of this obligation is such that, whereas in a suit in the circuit court of the United States, Massachusetts district, between said Suchet Mauran, 2d, plaintiff, and said Mercantile Marine Iusurance Company, defendant, judgment has been rendered in favor of said Mercantile Marine Insurance Company; and whereas said Suchet Mauran, 2d, has obtained a writ of error to the Supreme Court of the United States next to be holden at Washington, on the first Monday of December next; now, if the said Suchet Mauran, 2d, shall prosecute said writ of error to effect and answer all costs and damages if he fails to make good his said plea, then the above obligation to be void, else to remain in full force and effect.

SUCHET MAURAN, 2D. [L. S.]
EDWARD C. MAURAN. [L. S.]
A. A. FRAZER. [L. S.]

Witnesses:
A. B. POND.
W. H. JOHNSON.

Approved:

NATHAN CLIFFORD,
Associate Justice Sup. Court U. S.

Securities sufficient.

JAMES J. STORROW.